

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Sanford, North Carolina))

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MM Docket No. 95-135

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REPLY COMMENTS OF WOOLSTONE CORPORATION

Woolstone Corporation (Woolstone) files these reply comments to the "Comments and Counterproposal of WWGP Broadcasting Corporation." WWGP Broadcasting Corporation (hereafter WFJA) is the licensee of Radio Station WFJA-FM in Sanford, North Carolina. Allocation of Channel 276A to Sanford, as requested by Woolstone, would result in allocation of the second commercial FM station to Sanford and the only other competitive FM Sanford station. WFJA attempts to do two things in its Comments and Counterproposal. First, it attempts to ensure that 276A cannot be used competitively by requesting that Channel 276A be substituted for its current Channel 288A, and that Channel 288A be deleted from the Table of Allotments. In the alternative, but less desirable in the eyes of WFJA, WFJA is proposing that Channel 276A be allocated to Robbins, North Carolina, a small community less than 1/20th of the size of Sanford. Allocation of the channel to Robbins though would result in allocation of the channel to a community as far from Sanford as the spacing restrictions will allow.

As will be described in greater detail below, neither proposal is in the public interest. Channel 276A should be allocated to Sanford as requested by Woolstone and proposed in the *Notice of Proposed Rulemaking* (released August 21, 1995)(NPRM).

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A. Counterproposal OPTION 1

Substitution of Channel 276A for WFJA's Current Channel 288A.

WFJA cloaks what is its readily apparent anti-competitive intent, in the guise of the public interest. WFJA argues that deletion of its current Channel 288 from the Table of Allotments and the substitution of Channel 276A for its use, in lieu of allocation of a new service, is in the public interest. This is not the case.

WFJA's motivations aside, the FCC's allocation policies do not favor WFJA's proposed deletion and substitution. The FCC's priorities in allocating channels are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 51 RR2d 807 (1982). WFJA's proposal does not trigger any of the first three criteria. The analysis rests on "other public interest matters." WFJA premises its public interest showing on two arguments: (1) deletion of Channel 288A would eliminate grandfathered short spacings to first adjacent Station WFMX, Channel 289C, Statesville, North Carolina and second adjacent station WDCG, Channel 286C in Durham, North Carolina; and (2) substitution of Channel 276A for Channel 288A would allow WFJA to upgrade to 6.0 kw, allowing an increase in service to 16,599 people.

WFJA fails to address, or even acknowledge, the public interest benefits in allocating Channel 276A as a new station to Sanford. These public interest benefits greatly outweigh the proposed deletion/substitution. The deletion of Channel 288A will result in a *loss* of service to 63,620 people in an area of 1,868 square kilometers in WFJA's 60 dbu service contour. *See* Engineering Exhibit 1 at 2. The loss in service to 63,620 people falls woefully short of the proposed gain of 14,461 people which would result if WFJA could upgrade to 6.0 kw on Channel 276A. *See* Engineering Exhibit 1 at 4.

The benefit of eliminating the grandfathered short spacing to WFMX and WDCG is also minimal when compared to the loss in service to 63,620 people. Specifically, elimination of the grandfathered short spacing with WDCG would result in elimination of interference to only 18 people in a 1.7 square kilometer area. *See* Comments and Counterproposal Technical Exhibit at ¶ 9. Elimination of the grandfathered short spacing with WFMX would eliminate minimal interference currently received by WFJA from WFMX, which is theoretically prohibiting 1,444 people within WFJA's 1 mv contour from receiving the station. *Id* at ¶ 9. In sum, adding the total benefit of additional service to 14,461 people resulting from an upgrade to a 6 kw station, as well as the elimination of interference to 1,462 people, results in a net gain of service to 15,923 people over WFJA's current operation on Channel 288A. This does not even come close to benefitting the public interest when compared to the net loss of service to 63,620 people from the proposed deletion of Channel 288A. In other words, it is hardly beneficial to the public to adopt a proposal which will result in additional service to 15,923 people at the expense of a loss in service to 63,620 people. *See Clarksville, Indiana and Linesville, Indiana* 4 FCC Rcd 4968 (1989) (Greater population to be served determinative public interest factor in allocating new station.); *See also, Roswell, Georgia* 2 FCC Rcd 2775 (1987).

Not only does WFJA's proposal result in a net loss of service to 47,697 people, but its proposal would deny the public a new voice. Provision of new service is a compelling public interest factor in allocation of broadcast stations.¹ *See Benton, Arkansas*, 3 FCC Rcd 4840 (1988)

¹ Woolstone notes that, if the FCC adopts WFJA's proposal to delete 288 and substitute Channel 276A, an opportunity must be given to the public and to all other interested parties to apply for 276A.

The Commission's rules provide that a licensee or permittee may petition the Commission for an amendment to the FM and Television table of allotments, in modification of its license accordingly, without placing its existing authorization at

("We also restated our policy that a modification of license to upgrade facilities to a superior channel does not create as great a public benefit as that of a new primary service.") *See also Apalachicola, Florida*, 6 FCC Rcd 7147, 7148 (1990) ("In the absence of such a showing of need for the proposed increase in service [for an upgrade], a conflicting new allotment would be favored since it represents a new service.") Furthermore, the Commission will not delete a channel absent a compelling showing. *See Spencer, Minnesota*, 10 FCC Rcd ____ (Released March 28, 1995) ("It is long established Commission policy not to delete a channel from a community where interest in its use has been expressed absent a compelling public interest benefit.")²

risk. This procedure is limited to situations in which the new allotment would be mutually exclusive with the existing allotment and does not apply to non-adjacent channel upgrades.

See Saltville, Virginia, 10 FCC Rcd 7578 at n. 7 (1995). Channel 276A is not adjacent to 288A, nor is it mutually exclusive. *See also Tawas City, Michigan*, 10 FCC Rcd 6108 (Released June 9, 1995).

² WFJA cites *Columbia, South Carolina* 2 FCC Rec 2176 (1987) as support for elimination of grandfathered short spacing as a basis for substitution of Channel 276A for 288A. Woolstone notes that in Columbia, the proposal did involve the elimination of interference to 12,000 people, improved service to an additional 107,000 people, as well as the allocation of two new stations to other communities. Here, WFJA's proposal would result in the elimination of interference to only approximately 12,000, would result in a net loss in service to 47,697 people, and would result in the allocation of no new channels to other communities.

B. Counterproposal OPTION 2

Allocation of Channel 276A to Robbins, North Carolina

WFJA proposes that Channel 276A be allocated to Robbins, North Carolina.³ The public interest does not support allocation of Channel 276A to Robbins, a small community 36 kilometers southwest of Sanford. A maximum Class A facility at Robbins, North Carolina, would provide 1 mv/m service to 53,598 people in an area of 2,542 square kilometers. *See* Engineering Exhibit at 4. Woolstone's proposal to allocate the channel to Sanford will result in service to 77,453 people -- approximately 24,000 more. *id.* This represents nearly a 50 percent more efficient use of the spectrum in the total number of people served.

Although Robbins has no local broadcast outlets, it is a small community of only 970 people based on the 1990 census. It has lost nearly 300 people since the 1980 census. Robbins is less than 1/22nd the size of Sanford, which has a population of 22,000. The need for an additional second FM commercial service to the much larger community of Sanford outweighs the allocation of a first service to Robbins. This is particularly true since Robbins receives nine full-time FM services as well as service from many AM stations. *See, St. Augustine, Florida*, 46 RR 2d 1295,1297 (1980) (Allocation of a second FM service to St. Augustine with a population of 12,352 preferred over allocation of a first station to Callahan, Florida with a total population of 772.); *See also, Wilmer E. Huffman*, 22 RR 820,822 (1962).

³ WFJA has failed to make the requisite expression of interest in the allotment of Channel 276A to Robbins, North Carolina as required by Commission Rules. *See Midway, Florida*, 10 FCC Rcd 6112 (1995) ("Absent a bona fide expression of interest, we will not allot a Channel.") *See also Littlefield, Texas*, 10 FCC Rcd 6598 (1995). Nowhere in the text of WFJA's Comments and Counterproposal has WFJA expressed an intent to apply for and build the station. In the technical exhibit, WFJA's engineer claims that WFJA will file an application. However, this statement has not been made by the petitioner or the petitioner's counsel as agent for petitioner. Indeed, Rule 1.52 states, or certainly implies, that unless a commitment or statement is made on behalf of a petitioner by counsel, the petitioner must specifically verify all statements by affidavit.

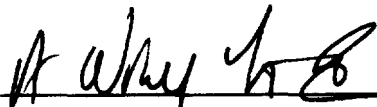
C. Conclusion.

WFJA's first counter proposal to substitute Channel 276A for 288A and to delete 288A from the Table of Allotments is clearly not in the public interest. It is a proposal that maximizes WFJA's self interest by eliminating any potential competition at the expense of new service to the public. WFJA's proposal would: (1) result in a net loss in service to 47,697 people as compared to allocation of Channel 276A to Sanford; (2) would require deletion of a station; and (3) would deny the public the benefit of the service of a new station.

Similarly, WFJA's attempt to, in the alternative, allocate 276A to a community as far from Sanford as possible must be rejected. This Counterproposal must be rejected since no proper expression of interest has been made. More importantly, the public interest warrants allocation of a second commercial FM service to the much larger community of Sanford than the allocation of a first allocation to the very small community of Robbins, North Carolina. Both communities are already well served by existing service, but allocation of 276 to Sanford will result in service to an additional 24,000 people representing a nearly 50% more efficient use of the channel than if allocated to Robbins.

Respectfully submitted,

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October 27, 1995

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TECHNICAL STATEMENT SUPPORT REPLY COMMENTS
IN MM DOCKET NO. 95-134
PREPARED FOR
WOOLSTONE CORPORATION
SANFORD, NORTH CAROLINA

This Technical Statement has been prepared on behalf of Woolstone Corporation, in support of a rule making petition to allot FM broadcast channel 276A to Sanford, NC (RM-8679). These comments pertain particularly to Comments and Counterproposal of WWGP Broadcasting Corporation (herein "WFJA") dated October 11, 1995.

WFJA suggests two options for use of FM channel 276A which is proposed for allotment to Sanford, NC by the Woolstone Corporation ("Woolstone") as the city's second local FM service. WFJA first proposes substitution of channel 276A for it's inferior channel 288A, or as an alternative to allot the channel to the distant small community of Robbins, NC. Both proposals will be addressed.

Substitution of Channel 276A for WFJA's 288A.

This substitution of channels, although admittedly relieving WFJA of two short spacing difficulties, does little for the public. Currently, WFJA provided 60 dBu service to 63,620 persons in an area of 1868 square kilometers. Assuming use of channel 288A at a

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site southwest of Sanford meeting separation requirements, WFJA would provide 60 dBu service to 78,081 persons in an area of 2486 square kilometers. The increase in coverage includes 14,461 persons. Due to siting requirements, 939 persons currently receiving WFJA's signal would be outside of the 60 dBu contour. WFJA skillfully proposed a site closer to the separation requirement than proposed by Woolstone so as to minimize the potential loss area. If a site meeting this requirement is unavailable, the loss of existing coverage could be greater.

On the other hand, Woolstone at the reference coordinates for channel 288A in the rule making, would provide a new FM service to 77,453 persons in the area of 2,529 square kilometers within the proposed 60 dBu contour. The Woolstone proposal is obviously more beneficial from the viewpoint of coverage.

Sanford, NC is claimed by WFJA to have four local services, two FM stations and two AM stations. One of the FM stations is a noncommercial education station not considered in rule making matters. The FCC in the Notice of Proposed Rule Making, states that the allotment of channel 288A would be "...the community's second local FM service". The two local AM stations are licensed for daytime-only operation; therefore, Sanford has but three local daytime services and only one local nighttime aural service.

Allotment of Channel 288A to Robbins, NC.

As a second option, WFJA suggest allotting the channel to Robbins, a community of 970 persons according

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to the 1990 Census, located approximately 36 kilometers southwest of Sanford. In 1980, Robbins had a population of 1,256 persons and 1,059 persons in 1970. It is not a very large city, and like most cities of that size does not have a local aural outlet.

An assumed full facility Class A station on Channel 288A, located at the Robbins reference coordinates would provide a new service to 53,598 persons in an area of 2,542 square miles, approximately 24,000 fewer persons than with the Woolstone proposal. The potential for service to more persons at Sanford is quite obvious.

A station operating on channel 288A at Sanford and employing maximum Class A facilities would easily include Robbins within its 60 dBu coverage area, thereby providing a new service to the community. As the community is so small, a premium grade of signal, 70 dBu, normally required to be provided to a station's city of license would be utterly wasted. The FCC requirement for the premium signal to a community of license is desired in order to overcome manmade noise and urban clutter, clearly a situation which does not exist in extremely small cities with population in the one thousand persons range.

Conclusions.

The use of channel 276A by WPJA results in misuse of valuable spectrum. Additionally, allotment of a channel to a tiny community - Robbins, NC - does not foster the goal of fair and equal distribution of facilities. The allotment of channel 276A to Sanford, NC

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as proposed by Woolstone is the only proper use of this FM
broadcasting channel.

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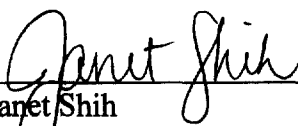
October 26, 1995

CERTIFICATE OF SERVICE

I, Janet Shih, in the law offices of Gammon & Grange, hereby certify that I have sent, this 27th day of October 1995 by first-class, postage-prepaid, U.S. Mail, copies of the foregoing REPLY COMMENTS OF WOOLSTONE CORPORATION to the following:

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